IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REV. APPLICATION NO.74 OF 1998

Ananda Keshav Kamble .. Applicant
Versus
Rangrao Tukaram Patil & Ors. .. Respondents

Mr.Prashant Badole for applicant
Mr.S.S.Pednekar, A.P.P. for respondent No.6.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 21st November 2006.

ORAL JUDGEMENT:-

. This revision is at the instance of original complainant who is aggrieved by the judgement and order dated 30th December 1997 in Special Case No.29 of 1997. Learned Special Judge has by the judgement and order acquitted accused Nos. 1 to 5 of the offences punishable under section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and section 7(1)(d) of the Protection of Civil Rights Act, read with section 323, 147, 149, 504

and 506 of I.P.C.

2. Prosecution's case is that the applicant-original complainant is residing at village Kekale. He owns agricultural land bearing Block No.190 at this village and resides with his wife, children, brother and brother's wife. On 14th June 1990 at 5.30 p.m. brother of applicant original complainant Tanaji Kamble had gone to the lands. He saw that accused No.2 Akaram Kamble was ploughing the land. Tanaji enquired as to how Akaram is ploughing the land belonging to complainant. It is alleged that accused No.2 Akaram got angry and assaulted Tanaji with kicks and fist blows. After hearing the commotion, complainant, his wife Laxmi, Tanaji's wife Ranjana, his mother and two daughters reached agricultural land. They also enquired as to how Akaram could have ploughed the land which belongs to the complainant. Other accused also came there. It is alleged that accused No.1 Rangrao

abused the complainant and assaulted complainant's wife Laxmi with a whip. He also slapped the complainant. The other accused abused them by referring to their caste and threatened them. The accused said that they will see how complainant and others stay in the village. After this incident, complainant's wife Laxmi proceeded to police station and lodged a complaint. Subsequently, the complainant became aware that in the complaint of his wife Laxmi, abuses hurled by the accused were not mentioned. Hence, the complainant Ananda went to Panhala Police Station on 14th July 1990 and lodged F.I.R. (Exh.24). It was registered by P.W.6, P.S.I. Patil as C.R. No.53 of 1990.

3. Investigations commenced. Spot panchanama was prepared and statement of about 12 witnesses were recorded. Supplementary statements of the complainant were recorded on 15th and 16th July 1990. It is pertinent to note

that Laxmi and others also gave supplementary statements. The accused Nos. 1 to 5 were arrested. It is alleged that accused No.1 while in custody produced the whip which was siezed in the presence of Panch witnesses under seizure panchanama Exh.21. The caste certificate of the complainant was produced Exh.25 which, according to the prosecution, shows that he is a Cobbler by caste. It is alleged that after the complaint was recorded by Laxmi, she and her brother in law Tanaji were sent to Cottage Hospital for treatment and injury certificates are also placed on record. Charge sheet was filed on 30th July 1998.

4. The Special Judge framed charges. Accused pleaded not guilty. Their defence is of total denial and false implication.

5. At the trial, apart from Medical Officer, Mrs.Bharti Sonawane, pancha witnesses Pandurang

Patil and Ramzan Sutar were examined. Pandurang Patil turned hostile. Other evidence is that of complainant's wife Laxmi and I.O. Ishwara Patil. The documentary evidence is as referred to above.

6. The only witnesses examined are by the prosecution. The accused have not led any evidence in their defence.

7. After considering all materials and the arguments, learned Judge delivered his order of acquittal.

8. Mr.Badole, learned Advocate for applicant original complainant submits that the Court below has committed an error in recording a judgement of acquittal. He submits that the Revisional Court is expected to step in when there is miscarriage of justice. He invites my attention to the impugned order and submits that the learned Judge has not commented upon the incident

at all. Learned Judge does not dispute that the incident took place. However, the learned Judge proceeds to disbelieve the prosecution version by relying upon the so called discrepancies and omissions. He submits that the learned Judge clearly over-looked the fact that these discrepancies and omissions are not fatal to the case of prosecution. They cannot be said to be material in any manner. Once legally admissible evidence is placed on record, then it is not permissible for the trial court to ignore the same. In such circumstances and when the offence is under Atrocities Act as well, the learned Judge should have been careful enough in appraising the evidence. He submits that this is a case where the Revisional Court should step in.

9. On the other hand, Mr.Dalvi appearing for accused submits that the judgement and order passed by the Courts below does not require any interference in the revisional jurisdiction of

this Court. He submits that Revisional Jurisdiction is not meant for re-appraisal and re-appreciation of the evidence. He submits that a finding of fact has been recorded consistent with the materials placed before the trial court and the same cannot be said to be perverse. The judgement is not vitiated as no material irregularity resulting in manifest injustice has been brought to the notice of this Court. He, therefore, submits that the revision application be dismissed.

10. Since, the charge involved Atrocities on the complainant and his family who allegedly belong to Cobbler caste I called upon both sides to go through the evidence of material witnesses. Accordingly, both Advocates have gone through the record.

11. Mr.Dalvi has invited my attention to the deposition of the complainant. He submits that

the complainant Ananda is working in Warna Sugar Factory and that too in shifts. It is doubtful whether he was present at site. Assuming without admitting that he was so present, his deposition is clear inasmuch as the accused No.2 Akaram is the cousin of complainant Ananda. Both belong to Scheduled Caste. Akaram entered upon complainant's land and started ploughing it and that is how the incident occurred. It is pertinent to note that both Ananda and Laxmibai were not there when Akaram was ploughing the land. It is the brother Tanaji who first reached the land. Tanaji was assaulted with kicks and fist blows. It is, thereafter, Laxmibai reached there and she was accompanied by wife of Tanaji and the children. Ananda also reached there later on. He deposes that he heard abuses hurled by accused No.1 Rangrao. In his examination in chief itself, complainant Ananda states that the incident was not reported to the police by him but by his wife Laxmibai. She has not mentioned

in her complaint to the police that any abuses much less, the alleged abuses were hurled. After noticing that the abuses were not mentioned in the complaint, complainant Ananda went to the police station later on and mentioned the same.

12. With the able assistance of the learned Advocates, I have perused the depositions of Ananda, Laxmibai, Medical Officer and both Panch Witnesses. Learned Judge is right in his conclusion that the prosecution has not been able to prove the charges. The testimony of the material witnesses does not inspire confidence. Wife of the complainant Ananda is working in Cottage Hospital. According to learned Judge, Medical Officer seems to have obliged her by mentioning injuries allegedly caused by whip-lash to her. However, this was the case when report was lodged to local police station. Ananda in his deposition says that police referred them to Cottage Hospital. However, prosecution could not

produce any documents from police station and hospital records which would demonstrate that any reference of the above nature was made. Cottage Hospital records do not mention that police sent any requisition or that request was made to examine the complainant's wife and Tanaji. The details of injuries including their dimension and colour are not mentioned. In such circumstances, the conclusion reached by the trial court in para 12 of the impugned order with regard to medical evidence does not appear to be either erroneous or suffering from any perversity.

13. Similar is the observation with regard to the other witnesses. The seizure of the so called weapon (whip) appears to be suspicious, according to the trial court. It is because one panch witnesse Pandurang Patil who is working as Sweeper in the police station, has mentioned very clearly that the spot was not seen nor did he accompany police party when the arrest was

effected. Mr.Ramzan Shaikh is other panch witness and the learned Judge has referred to his deposition in details. In such circumstances, the learned Judge is right in his conclusion that the so called recovery also does not inspire confidence. The deposition of witnesses have been referred to in details. Learned Judge has also observed that the prosecution case has not been corroborated by independent witnesses. Although, both complainant and Laxmibai mentioned presence of several persons as also state that some residential strucures are within 50 feet from the spot nobody has been examined. Even Tanaji has not been examined. He is supposed to have entered the land before everybody and suffered kick and fist blows at the hands of accused.

14. In my view, learned Judge was, therefore, right in holding that the prosecution was unable to prove the charges against the accused. The

order of acquittal recorded in such circumstances, does not suffer from any infirmity so as to call for interference in the revisional jurisdiction of this Court.

15. Revision application, therefore, stands dismissed. Rule is discharged.

(S.C.Dharmadhikari, J)